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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,818	09/25/2003	Kurt Winner	P/1070-6	7309
2352	7590	06/10/2005	EXAMINER	
OSTROLENK FABER GERB & SOFFEN 1180 AVENUE OF THE AMERICAS NEW YORK, NY 100368403			STRIMBU, GREGORY J	
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 06/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/670,818

Applicant(s)

WINNER, KURT

Examiner

Gregory J. Strimbu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 September 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

Drawings

The drawings are objected to because the applicant has failed to use the proper cross sectional shading when showing the invention in cross section. For example, figure 2 shows the push rod 3 with a metal cross sectional shading even though the push rod comprises plastic. See MPEP 608.02. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

Claims 1-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as "so as to form a free end" on line 7 of claim 1 render the claims indefinite because it is unclear what element of the invention includes the free end to which the applicant refers. Recitations such as "formed by an upper edge of the opening" on line 14 of claim 1 render the claims indefinite because it is unclear how an opening can form a lip. It appears that it is the housing which forms both the lip and the opening. Recitations such as "the receiver" on lines 1-2 of claim 2 render the claims indefinite because it is unclear if the applicant is referring to the receiver element set forth above or is attempting to set forth another element in addition to the one set forth above. Recitations such as "a finger" on line 3 of claim 14 render the claims indefinite because it is unclear what includes the finger to which the applicant refers. Recitations such as "the flexible portion" on line 2 of claim 19 render the claims indefinite because they lack antecedent basis.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1, 6, 8, 9, 18, 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turner in view of Levan. Turner discloses a linear window operator for opening a window having a frame 10, 11, 12, 13 and a movable sash 16, comprising a receiver housing 34 mountable to the window frame, the housing having an opening there-through (not numbered, but shown in figure 3) and a spring member 35 adjacent the opening, the spring member having a rest position, a hinge bracket 21 mountable to the window sash, the hinge bracket having a flexible member 30 extending therefrom so as to form a free end, the free end being formed with a receiver element (not numbered, but comprising the hole receiving the rivet), and a push rod 31 having a first end and a second end, the first end of the push rod being configured as an engagement member releasably engaged with the receiver element of the flexible member of the hinge bracket, the push rod being arranged in the through opening of the receiver housing so as to be slidable there through, the spring member being arranged to hold the push rod and can be disengaged by compression of the spring, a finger pull member 32. Turner is silent concerning detents.

However, Levan discloses a linear window operator for opening a window having a frame and a movable sash, comprising a receiver housing 11 mountable to the window frame, the housing having an opening 13 there-through and a spring member 31 adjacent the opening, the spring member having a rest position, a hinge bracket 24 mountable to the window sash, the hinge bracket having a free end (not numbered, but shown in figure 5), the free end being formed with a receiver element (not numbered, but shown in figure 4 receiving the end of the push rod 12), and a push rod 12 having a

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first end and a second end, the first end of the push rod being configured as an engagement member releasably engaged with the hinge bracket, the push rod being arranged in the through opening of the receiver housing so as to be slidable there through, the push rod having a detent 22 adjacent its second end that is engageable with an engagement lip 21 formed by an upper edge of the opening in the receiver housing, the spring member being arranged to hold the detent in engagement with the lip in the rest position so that the detent can be disengaged from the lip by compression of the spring, the spring including a baffle (not numbered, but shown in figure 4 as the upwardly turned end portion of the spring), the push rod 12 including a radiused engagement tongue (not numbered, but shown in figure 4), the housing 11 comprising a first plate member (not numbered, but comprising one of the vertical sides of the housing) defining a portion of the through opening and a second plate member (not numbered, but comprising the bottom of the housing) and a radiused depression (not numbered, but comprising the hold within which the screw holding the spring is disposed as best shown in figure 5).

It would have been obvious to one of ordinary skill in the art to provide Turner with a holding means and push rod, as taught by Turner, to more securely hold the sash in a plurality of open positions.

Claims 2, 3, 4, 11, 12, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Levan in view of Turner as applied to claims 1, 6, 8, 9, 18, 19 and 21 above, and further in view of Anderberg et al. Anderberg et al. discloses a hinge

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bracket 13 including a receiver 19 comprising two parallel plates 23 that define a gap therebetween and a push rod 25 having an engagement member (comprising the distal end of the push rod) having a thickness substantially equal to the gap of the hinge bracket, a pivot hole 29, pivot pin 27.

It would have been obvious to one of ordinary skill in the art to provide Turner, as modified above, with a connection means, as taught by Anderberg et al., to increase the strength of the connections between the push rod, flexible member and the hinge bracket.

Claims 5 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turner in view of Levan and Anderberg et al. as applied to claims 2, 3, 4, 11, 12, 14 and 16 above, and further in view of Tinkle. Tinkle discloses a holding device comprising a first bar 12 pivotally moveable relative to a second bar 28 and further comprising a plurality of detents 48 and a locating bump 44 so as to locate the first bar with respect to the second bar in predetermined positions.

It would have been obvious to one of ordinary skill in the art to provide Turner, as modified above, with detents and locating bumps, as taught by Tinkle, to more securely hold the push bar relative to the flexible member when the push bar is in a stored position.

Claims 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turner in view of Levan as applied to claims 1, 6, 8, 9, 18, 19 and 21 above, and further

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in view of Hayman. Hayman discloses a linear window operator 22 having a plastic construction. See column 3, lines 51-53.

It would have been obvious to one of ordinary skill in the art to provide Turner, as modified above, with a plastic construction, as taught by Hayman, to reduce the weight of the operator.

Claims 13, 15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turner in view of Levan as applied to claims 2, 3, 4, 11, 12, 14 and 16 above, and further in view of Hayman. Hayman discloses a linear window operator 22 having a plastic construction. See column 3, lines 51-53.

It would have been obvious to one of ordinary skill in the art to provide Turner, as modified above, with a plastic construction, as taught by Hayman, to reduce the weight of the operator.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Nelson, Kelly, Becker, Erickson, Brownie, Cook, Martin, Armstrong, Ahlgren '266 and '075, and Ring are cited for disclosing a linear window operator.

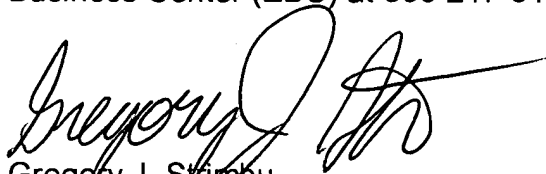
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-

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272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gregory J. Shimbu
Primary Examiner
Art Unit 3634
June 8, 2005